

## **Department of Environmental Quality**

### **Comments on HB 4387 (DTMB Lead Agency)**

HB 4387 negatively impacts the timeframes for review and/or audit of submissions made under the following Parts/Acts:

- Under Part 13, Permits, of the Natural Resources and Environmental Protection Act, as amended (NREPA), permit applications are considered to be administratively complete 30 days after a department receives the application. HB 4387 would shorten that time by an estimated 5-7 days. This could be significant issue, especially for some of the more detailed and complex permit applications.
  - Failure to comply with the 30 day administrative completeness determination time limit would result in the DEQ being required to process incomplete applications. This, in turn, would result in incomplete applications on public notices, lack of public transparency in the permit review process, more permit denials due to lack of adequate project documentation, and reduced customer service. Part 13 does not allow the DEQ to request additional application information after the administrative completeness review.

The following permits fall under Part 13 of NREPA:

- Section 3104, floodplain alteration permit.
- Section 3503, permit for use of water in mining iron ore.
- Section 4105, sewerage system construction permit.
- Section 6516, vehicle testing license.
- Section 6521, motor vehicle fleet testing permit.
- Section 8310, restricted use pesticide dealer license.
- Section 8310a, agricultural pesticide dealer license.
- Section 8504, license to manufacture or distribute fertilizer.
- Section 9112, local soil erosion and sedimentation control permit.
- Section 11509, solid waste disposal area construction permit.
- Section 11512, solid waste disposal area operating license.
- Section 11542, municipal solid waste incinerator ash landfill operating license amendment.
- Section 11702, septage waste servicing license or septage waste vehicle license.
- Section 11709, septage waste site permit.
- Section 30104, inland lakes and streams project permit.
- Section 30304, state permit for dredging, filling, or other activity in wetland. Permit includes an authorization for a specific project to proceed under a general permit issued under section 30312.
- Section 31509, dam construction, repair, or removal permit.
- Section 32312, flood risk, high risk, or environmental area permit.
- Section 32512, permit for dredging and filling bottomland.
- Section 32603, permit for submerged log removal from Great Lakes bottomlands.
- Section 35304, department permit for critical dune area use.
- Section 36505, endangered species permit.

- Section 41702, game bird hunting preserve license.
- Section 42101, dog training area permit.
- Section 42501, fur dealer's license.
- Section 42702, game dealer's license.
- Section 44513, charter boat operating permit under reciprocal agreement.
- Section 44516, boat livery operating permit.
- Section 45503, permit to take frogs for scientific use.
- Section 45902, game fish propagation license.
- Section 45906, game fish import license.
- Section 61525, oil or gas well drilling permit.
- Section 62509, brine, storage, or waste disposal well drilling or conversion permit or test well drilling permit.
- Section 63103a, ferrous mineral mining permit.
- Section 63514 or 63525, surface coal mining and reclamation permit or revision of the permit, respectively.
- Section 63704, sand dune mining permit.
- Section 72108, use permits for a Pure Michigan Trail.
- Section 76109, sunken aircraft or watercraft abandoned property recovery permit.
- Section 76504, Mackinac Island motor vehicle and land use permits.
- Section 80159, buoy or beacon permit.

\*\*\*Note: DEQ issued nearly 9,000 permits in FY16. A large number of those fall under Part 13, Sections 301 and 303.

- Part 201, Environmental Protection, and Part 213, Leaking Underground Storage Tanks, of the NREPA. Under these two Parts, “information submissions” as defined in the bill would include, but are not limited to, response activity plans, no further action reports, final assessment reports, and closure reports that describe or propose those activities that have been or will be taken at a site of environmental contamination that are necessary to protect public health, safety, welfare and the environment.
  - These and other submissions typically have a statutory timeframe by which the department, “upon receipt” of the submission, must make a decision regarding its approval. The time necessary to complete an adequate and thorough review of the submission will be shortened. Both of these circumstances have a potential to result in the submission being approved by operation of law without a department determination of whether the activities taken or proposed are protective or comply with law.

\*\*\*Note: In FY16, 805 Part 201 and 213 sites were managed and risks were controlled or eliminated using the actions noted above that would be included within “information submissions”.

- For petitions for orders under Part 615, Supervisor of Wells, of NREPA, it specifies that answers must be received at least five days prior to the scheduled hearing date. Under HB 4387, DEQ may not “receive” an answer until the day of the hearing. This would then result in some cases having to be adjourned and the hearing being rescheduled.

### **Additional Comments to Note:**

- Postmarks are often hard to read or even illegible, which can raise some additional problems, particularly where there are legal requirements.
- Although the definition in the bill of “information submission” could be interpreted to mean it only applies to submissions required to be submitted through USPS, I think it could also be interpreted to mean this bill applies to any information sent through the USPS whether is required to be or not.
- In addition to materials being sent USPS, DEQ frequently receives materials via email and fax. It is not uncommon for some items, such as construction plans, to be hand-delivered.
- It is unclear if FOIA requests would be subject to this provision. If so, it is already challenging in many cases to turn FOIA requests around within a timely manner. This would make it even more difficult and likely result in more requests for extending the timeframe for response.

